IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 517 OF 1992

Baburao Maruti Ingwale, since deceased by his legal heirs and representatives Smt. Sushila Baburao Ingwale & Ors. ..Petitioners

versus

State of Maharashtra & Ors. ..Respondents

Mr. A. V. Bandiwadekar for the Petitioners.

Mr. S. K. Chinchalikar AGP for the Respondents - State.

CORAM : D. G. DESHPANDE, J.

DATE : 12TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioners and learned AGP for the State.

2. By a Notification under Section 4 of the Land Acquisition Act dated 17.11.1983, land to the extent of 1.20 hectres and 10 R out of Gat No. 221 and 10 R from Gat No. 64 was proposed to be acquired from District Satara, Taluka Satara, Village Kidgaon. Similar Notification under Section

6 was also issued later on. The original petitioner gave the proposal to the Acquiring Authorities that instead of this land, his Gat No. 64 only should be acquired. The proposal was processed. It was found that the land under Notification was neither suitable nor convenient for project affected persons, and, therefore, it was recommended that the land offered by the petitioner should be accepted. However, when further probe and enquiry was made, it was found that the two brothers of the Petitioner, who had a share in the land proposed by the Petitioner has refused to give their consent, and, therefore, that proposal was ultimately rejected by the Additional Commissioner, Pune, vide Exhibit 'I' (page 33 of the Petition). It is Order dated 1.11.1991. As against this decision, the present Petition is filed in 1992 and status-quo is obtained.

3. My attention was drawn by the Advocate for the petitioners to Exhibit 'E' (pages 25 to 27 of the petition), which is a proposal of the Collector, wherein the Collector has stated as under:

"The proposal of the Petitioner for

> accepting Gat No. 64 should be accepted and even though from Gat No. 64 the Petitioner is entitled to 2 Acres 15 Gunthas of land only, the remaining land i.e. land falling short by 25 gunthas can be acquired from his other land and upon this condition the proposal of the Petitioner can be accepted."

Advocate for the Petitioners contended that there was a partition amongst three brothers in 1954 and pursuant to that partition, each of the brother is enjoying share separately in respect of Gat No. 64 also and since the Collector has recommended acceptance of the proposal, there was no reason for the Additional Commissioner to reject the same.

4. The simple question that is involved in this case is that the petitioner does not want that piece of land to be acquired for which Notification dated 17.11.1983 under Section 4 was issued as per Exhibit 'B' (page 22 of the petition). He is offering some other land to the Government and obviously in such circumstances he should have clear title to the property, he should be the exclusive owner thereof and the property should be in his exclusive

possession. He cannot offer property not belonging to him or in which others are disputing his claim. There may or may not be a partition of Gat No. 64 but what the Commissioner ultimately found was that two brothers are disputing the possession of the petitioner vis-a-vis Gat No. 64, and, therefore, in these circumstances and in view of the dispute created and raised by the two brothers, the Additional Commissioner was fully justified in rejecting the proposal of the Petitioner.

5. It does not lie in the mouth of the Petitioner to contend that if the Collector has accepted the theory of partition, then inspite of the protest of the brothers, the Government should have accepted his proposal of alternate land. The Government is not entitled to enter into the dispute with other owners when the question of acquisition comes into. The Government has already issued Notification in respect of certain land and it was reconsidered because of the anxiety of the Petitioner to offer that particular land in lieu of some other land i.e. Gat No. 64. From the revenue record and conduct of the parties, the Additional Commissioner found that two of the brothers are not

accepting the proposition or the proposal of the Petitioner, then the Additional Commissioner was justified in rejecting the proposal.

6. Even otherwise the case of the Petitioner appears to be contradictory. At one time in the petition he says that there was a partition and at other time in the petition he says that he should be treated as a Manager of the family and his consent should be taken on behalf of all those concerned. Both these pleas are contradictory and they are destructive of the plea of partition or joint ownership. Therefore, there is no merit in this Petition, the same is dismissed. Order of Statusquo stands vacated. No order as to costs. Rule discharged accordingly.

(D.G. DESHPANDE, J.)